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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

SEP 10 1994  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Section 309(j) )  
and the Communications Act - )  
Competitive Bidding )

PP Docket No. 93-253

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REPLY OF MCCAW CELLULAR COMMUNICATIONS, INC.

McCaw Cellular Communications, Inc. ("McCaw"), by its attorneys, hereby replies to the Opposition and Comments of Pacific Bell Mobile Services<sup>1</sup> ("PacBell Mobile") regarding the length of the bidding rounds for the broadband personal communications services ("PCS") auctions. For the reasons stated below, PacBell Mobile's opposition to McCaw's recommendation for the duration of the bidding rounds is not well-founded and thus does not warrant denial of the reconsideration requested by McCaw. The public interest instead would be served by Commission action consistent with the McCaw proposal to ensure that all eligible applicants are able to participate in the auctions on as informed a basis as possible and with reasonable access to available resources.

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<sup>1</sup> Opposition and Comments of Pacific Bell Mobile Services, PP Docket No. 93-253 (filed Sept. 9, 1994) ("PacBell Mobile Opposition").

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In its petition for reconsideration<sup>2</sup> of the Fifth Report and Order in this docket,<sup>3</sup> McCaw argued that "the one business day adopted as the preferred length of the bidding rounds is likely to be too short to permit fully informed bidding on the part of broadband PCS applicants."<sup>4</sup> McCaw cited a number of practical considerations underlying this conclusion. McCaw also recognized that its recommended course of action would be likely to increase the length of the auction but that this development is outweighed by the benefits associated with more informed participation, higher bids, and a decreased likelihood of default on the part of bidding applicants.

PacBell Mobile opposes the reconsideration action advocated by McCaw on the basis that "it would result in the auction taking far too long -- probably more than a year if the Commission did not exercise its option to call for a final round of bids -- and because McCaw has exaggerated the difficulties that bidders face in a faster paced auction."<sup>5</sup> To reach its conclusions, however, PacBell Mobile and its consultant either minimize or ignore completely a number of real world considerations that necessarily

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<sup>2</sup> Petition for Reconsideration of McCaw Cellular Communications, Inc., PP Docket No. 93-253 (filed Aug. 22, 1994) ("McCaw Petition").

<sup>3</sup> Implementation of Section 309(j) of the Communications Act - Competitive Bidding, FCC 94-178 (July 15, 1994) ("Fifth Report and Order").

<sup>4</sup> McCaw Petition at 2.

<sup>5</sup> PacBell Mobile Opposition at 3.

will affect the ability of applicants to make informed bids in the broadband PCS auctions.

According to PacBell Mobile, "[t]he valuation of licenses and financing commitments will be worked out in most cases prior to the auctions."<sup>6</sup> McCaw concurs that applicants for PCS licenses necessarily will undertake a great deal of such preparation in advance of the auctions. But the analogy made by PacBell Mobile's consultant to takeover contests is particularly apt.<sup>7</sup> While the contestants in a takeover battle often have substantial financing available in advance of undertaking such an effort, the actual contest may lead to offers requiring the parties to seek additional financing during the course of the battle, as evidenced, for example, in the recent Paramount contest.<sup>8</sup> Similarly, the bids for the broadband PCS licenses may rise to levels wholly unanticipated by the applicants, requiring them as well to seek out additional sources of funding while the bidding is still underway.<sup>9</sup> The auctions held to date confirm

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<sup>6</sup> PacBell Mobile Opposition at 7.

<sup>7</sup> See Affidavit of Paul R. Milgrom, attached to PacBell Mobile Opposition, at 4 ("Milgrom Affidavit").

<sup>8</sup> See, e.g., R. Smith, Wall Street's Final Analysis: Might Made Right, Wall St. J., Feb. 16, 1994, at B1 (timeline showing Viacom obtaining additional financing for Paramount bid from Blockbuster and NYNEX; QVC enlisting financial backing from Cox Enterprises, Advance Publications and BellSouth throughout course of bidding war).

<sup>9</sup> This may be particularly true for smaller entities, new entrants, and designated entities seeking to participate in the  
(continued...)

that final bids for the broadband PCS auctions are quite likely to exceed many applicants' original projections. Clearly, the public interest would not be served by foreclosing qualified applicants from pursuing PCS licenses simply because the length of rounds prevents them from arranging necessary additional financing that in fact would be available to them.

PacBell Mobile and its consultant apparently disregard that valuations and financing arrangements made in advance cannot fully take into account the bids that actually will be made by the PCS applicants. What happens in the auction process itself cannot be known in advance. Indeed, PacBell Mobile's consultant implicitly recognizes as much elsewhere in his affidavit, in stating that, "[t]he broadband auction might involve more complicated and intertwined back-up strategies [than the narrowband auctions]. One bidder's new activity on a license might cause a second bidder to withdraw bids or to switch to its own back-up, and the effects may cascade."<sup>10</sup> These effects, as well as the efforts of various possible entrants simply to implement their initial plans, cannot be fully determined prior to the conduct of the auctions themselves.

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<sup>9</sup>(...continued)  
broadband PCS auctions. The Congress and the Commission have made clear their desire to encourage the participation of such parties in this industry, yet these are the entities that may well find that the bidding exceeds the levels of financing they have been able to arrange in advance of the auctions.

<sup>10</sup> Milgrom Affidavit at 5.

Similarly, PacBell Mobile suggests that, as the bidding progresses, "there will be less information to evaluate."<sup>11</sup> In support of this claim, PacBell Mobile's consultant speculates, without any basis, that in the later rounds fewer than ten MTA licenses may be actively contested.<sup>12</sup> This reasoning ignores his own statements cited above regarding the possible widespread effects on one bidder's effort to implement changes in its back-up strategies. Moreover, the Commission has previously -- and correctly -- recognized that it is in the later rounds that the consequences of bid decisions are the greatest and bidders need the most time.<sup>13</sup>

PacBell Mobile simply ignores the valid concern raised by McCaw about the format of available information about each round of bidding, which in turn must necessarily be an important factor in subsequent bids to be submitted by a broadband PCS applicant. If participants cannot readily obtain access to the information in a useful format, and the Commission pursues the approach advocated by PacBell Mobile, applicants either will be forced to make decisions without effective access to important, meaningful data or will decide to exit the auction process to avoid the risks associated with uncertain decision-making.

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<sup>11</sup> PacBell Mobile Opposition at 8.

<sup>12</sup> Milgrom Affidavit at 6.

<sup>13</sup> Fifth Report and Order ¶ 50.


Likewise, neither PacBell Mobile nor its consultant address the fact that key decision-making personnel associated with an applicant may be located on the west coast of the United States. This is a very real issue the Commission must confront as a matter of fairness to all parties involved in seeking PCS licenses.

In sum, the PacBell Mobile argument makes sense only through reliance on a model devoid of any consideration of reality and practicalities. The Commission instead should take a more realistic view and adopt McCaw's proposal to lengthen the bidding rounds to ensure that applicants may participate in the auctions on the most effective basis possible. While the PCS licenses may not be issued as expeditiously as desired by PacBell Mobile, McCaw's approach will result in more efficacious auction results helping to ensure that the broadband PCS licenses are awarded to the parties that most highly value such spectrum and that seek to provide service consistent with the public interest. The PacBell Mobile arguments must be dismissed as the self-interested positions that they are, and the bidding rounds increased to two

days early in the PCS auctions and up to one week in later rounds.

Respectfully submitted,

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September 19, 1994

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September, 1994, I caused copies of the foregoing "Reply of McCaw Cellular Communications, Inc." to be mailed via first-class postage prepaid mail to the following:

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